

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's post-2005 Energy Efficiency Policies, Programs, Evaluation, Measurement and Verification, and Related Issues.

Rulemaking 06-04-010
(Filed April 13, 2006)

**ASSIGNED COMMISSIONER'S RULING AND
SCOPING MEMO AND NOTICE OF PHASE 1 WORKSHOPS
ON RISK/RETURN INCENTIVE MECHANISM**

1. Summary

This ruling and scoping memo describes the issues to be considered in this proceeding and the timetable for their resolution. As required by Rules 6(c)(2) and 6.3 of the Commission's Rules of Practice and Procedure (Rules), this ruling affirms the proceeding category, addresses the projected resolution date of the proceeding and the need for evidentiary hearings, following a prehearing conference (PHC) on May 9, 2006.¹

This ruling also serves as notice of workshops in Phase 1 of this rulemaking, which will proceed as follows:

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| May - early June: | Parties meet and confer informally on Phase 1 issues and risk/return incentive mechanism proposals. |
| June 16, 2006: | Pre-workshop written comments on Phase 1 issues and preliminary proposal for incentive mechanism filed and served. |
| June 26-28, 2006: | Workshop to discuss Phase 1 issues/preliminary proposals |

¹ All references herein to "Rules" refer to the Commission's Rules of Practice and Procedure, which can be viewed at www.cpuc.ca.gov

All three days of the Phase 1 workshop will be held in the Commission's Training Room A at 505 Van Ness Avenue, San Francisco. The first day of the workshop will begin at 10:00 a.m. and end at 5:00 p.m. The second and third days will begin at 9:00 a.m. and end at 5:00 p.m. Attachment 4 provides specific direction to the utilities and interested parties for their Phase 1 comments and the information to be discussed during the workshop.

By today's ruling, I also direct the utilities to file by June 15, 2006 a report that compares their best estimates of forecast savings in State-owned and commercial buildings over the 2006-2008 program cycle with the 20% reduction goal of Executive Order S-20-04 (Green Buildings Initiative). I will use these assessments to give further direction if necessary to the utilities in order to implement the Green Building Initiative more effectively.

Today's ruling also requires utility submittals and solicits comments from interested parties on other issues in this proceeding, as discussed below.

2. Scope of the Proceeding

The Order Instituting Rulemaking (OIR) sets forth a preliminary scoping memo for this proceeding, finding that this rulemaking should serve as the forum for six major categories of energy efficiency issues: 1) Shareholder Risk/Reward Incentive Mechanism, 2) Evaluation, Measurement and Verification (EM&V), 3) Refinements to Policy Rules and Reporting Requirements, 4) Updates to Energy Efficiency Potentials Studies and Savings Goals, 5) Implementation of 2006-2008 Portfolio Plans and Planning Process for 2009-2011 Program Cycle, and 6) Transition Issues and Filings Related to Pre-2006 Programs. After considering the PHC statements and the discussion at the PHC, I elect to proceed with a phased approach for this proceeding, as recommended in the preliminary scoping memo.

A. Phase 1: Shareholder Risk/Reward Incentive Mechanism

In Phase 1 of the proceeding, the Commission will develop a shareholder risk/reward incentive mechanism for energy efficiency consistent with the policy rules, performance basis and associated updating/true-up determinations adopted in Rulemaking (R.) 01-08-028 and related proceedings. We will evaluate all aspects of such a mechanism, including consideration of the following issues:

- How to provide utilities with an opportunity to earn financial rewards for their shareholders balanced by the risk of financial penalties for poor performance. (Decision (D.) 06-02-032, *mimeo.*, p. 31.)
- How to ensure that shareholder incentives are paid on a portfolio of energy efficiency programs only if the portfolio performs better than the supply-side resources it was intended to replace. (D.05-04-051, *mimeo.*, p. 41.)
- How to establish a minimum performance threshold for shareholder incentive payments that is tied to Commission-adopted kilowatt, kilowatt-hour and therm savings goals. (D.05-04-051, *mimeo.*, p. 43 and Ordering Paragraph 6; D.05-09-043, *mimeo.*, p. 132 and Attachment 10.)
- Whether shareholder incentive payments under this risk/reward mechanism will be included (as a cost) in the energy efficiency tests of cost effectiveness. (D.05-04-051, *mimeo.*, p.23)
- What should be the authorized earnings recovery period? For example, should the pay out of authorized earnings be made in installments over an earnings recovery period, or paid out in one single installment? Further, how should the pay out of earnings be linked to one or more of the *ex post* verification and performance basis reports that will be issued per the EM&V protocols? (See *Administrative Law Judge (ALJ) Ruling Adopting Protocols For Process and Review of Post-2005 EM&V Activities*, January 11, 2006 in R.01-08-028, Attachment 2)

- How to ensure that the design of energy efficiency-specific incentives works in tandem with the concept of a “greenhouse gas allowance sales” incentive mechanism discussed in D.06-02-032, in order to eliminate any potential double-counting of financial rewards or penalties. (D.06-02-032, *mimeo.*, pp. 34-35.)

As discussed at the PHC, this phase of the proceeding will not be the forum for re-litigating the manner in which the Commission intends to evaluate the performance of programs under a risk/reward incentive mechanism. The Commission has adopted the “performance basis” for programs designed to avoid or defer more costly supply-side options (“resource programs”) as well as for programs that do not directly procure energy resources, such as information, education/training and statewide marketing activities (“non-resource programs”).² We will also not re-litigate the Commission’s determination that incentives or performance awards should be based on portfolio performance rather than individual program performance.³

Nor will we address a performance incentive mechanism for the Low Income Energy Efficiency (LIEE) program at this juncture. As noted at the PHC, it would be premature to do so until the basis for earnings (performance

² May 9, 2006 Reporter’s Transcript (RT) at 26-27. For the Commission’s determinations on these “performance basis” issues, See D.05-04-051, *mimeo.*, pp. 38-43, 60-64; see also: *Administrative Law Judge’s Ruling on EM&V Protocol Issues*, September 2, 2005 in R.01-008-028, pp. 2-6, 14-15.

³ D.05-04-051, *mimeo.* p. 43. This does not preclude parties from considering the application of their proposed risk/reward mechanism to separate portfolios of programs (e.g., separate residential/commercial portfolios) if there are persuasive policy reasons for doing so (consistent with the policy rules for energy efficiency) without major implementation difficulties. The focus, however, should be on portfolio performance, rather than the performance of each individual program. See also the discussion of this issue in D.94-10-059 (2d CPUC 57 1, pp. 46-49).

basis) and related issues for LIEE have been addressed.⁴ In addition, we clarified at the PHC that the Solar Initiative pilot solar water heating project for SDG&E is not part of the 2006-2008 energy efficiency portfolio plans, associated savings goals or the risk/reward incentive mechanism we are developing in this phase of the proceeding.⁵

One particular scoping issue was raised at the PHC that warrants further clarification. Some parties inquired whether the Commission will need to resolve counting issues associated with savings from Codes and Standards (C&S) advocacy work in the context of Phase 1. In response, I note that the Commission has already made several determinations regarding the treatment of savings from these programs in D.05-04-051, particularly with respect to the counting of savings from pre-2006 C&S advocacy work towards performance basis, cost-effectiveness evaluation and achievement of savings goals for the 2006-2008 program cycle.

More specifically, the Commission has determined that pre-2006 C&S advocacy work will *not* be counted when calculating either net resource benefits (performance basis) or cost-effectiveness associated with portfolio plans for 2006 and beyond, either on a prospective or *ex post* (post-installation) basis. However, on a forward looking basis, the Commission has stated that savings from C&S advocacy work undertaken in 2006 and beyond *will* be counted when calculating either net resource benefits or cost-effectiveness, based on the final protocols established in the EM&V phase of this proceeding. The Commission has also identified certain timing issues for calculating the performance basis with respect

⁴ RT at 54-55.

⁵ RT at 58-61.

to C&S programs that will need to be addressed during the EM&V phase, as I note in my discussion of Phase 2 issues.

With respect to counting the results of C&S advocacy work towards the Commission's adopted savings goals, the Commission has decided that it is reasonable to allow the utilities to credit some portion of the savings attributable to pre-2006 C&S advocacy work towards the 2006-2008 program cycle savings goals, due to certain short-term transitional inconsistencies discussed in D.05-09-043. Specifically, the Commission directed in D.05-09-043 that 50% of the verified savings associated with pre-2006 codes and standards advocacy work be credited towards 2006-2008 portfolio savings when evaluating whether the portfolios actually meet or exceed the Commission's savings goals.

As the Commission acknowledged in D.05-09-043, this determination raises the issue of whether verified savings from pre-2006 C&S advocacy work should also count towards the minimum threshold requirement for shareholder earnings under the risk/return incentive mechanism we are developing in this proceeding. Accordingly, the Commission will address this C&S counting issue in Phase 1 as it develops the specifics of the minimum threshold performance requirement. Beyond the 2006-2008 program cycle, however, the Commission has deferred consideration of whether savings from pre-2006 C&S advocacy work will also count towards the updated goals for 2009 and beyond, pending further consideration of the baseline issues discussed in D.05-09-043. Those baseline issues will need to be addressed as we develop the updated potentials studies discussed under Phase 4.⁶

⁶ For the Commission's discussion of these C&S related issues, see D.05-09-043, *mimeo.*, pp. 123-133, and Attachment 10.

In addition, at the PHC we clarified that Phase 1 will be the forum for addressing the manner in which free rider (“net-to-gross”) adjustments should be applied in calculating the costs and benefits of the risk/reward incentive mechanism performance basis, an issue raised by Energy Division during the review of cost-effectiveness calculations for the 2006-2008 compliance filings.⁷

We also briefly discussed the type of information/analysis that all parties will want to consider in developing their shareholder risk/reward incentive mechanism proposals for the workshop discussion.⁸ Interested parties should be prepared to present in their pre-workshop comments and discuss at workshops the risk/return regulatory environment today (and in the foreseeable future) facing the utilities with respect to non-energy efficiency resource options and increasing load. However, as the Commission noted when it addressed the design of a shared-savings incentive mechanism for energy efficiency in the early 1990s (in R.91-08-003/Investigation (I.) 91-08-002), there are various other factors and information to consider in establishing potential shareholder earnings levels under such a mechanism.

While the Commission may take a different approach to establishing the design of a shareholder risk/reward incentive mechanism in this proceeding, it is nonetheless useful for interested parties to recognize what the Commission has considered in developing such a mechanism in the past. As discussed in

⁷ See RT at 56. Division of Ratepayer Advocates (DRA) also requested that we address in Phase 1 the accounting of costs in the Standard Practice Manual tests of cost-effectiveness. ALJ Gottstein, who is also assigned to the 2006 Update phase of the avoided cost proceeding, R.04-04-025, indicated that this issue has been raised in the workshops and comments in that proceeding, and will be addressed in the Commission’s 2006 Update decision.

⁸ RT at 30-31, 32-34.

D.94-10-059, the Commission considered what would be a reasonable starting point for providing a comparable earnings opportunity for energy efficiency by reviewing the range of “effective earnings rates” associated with supply-side resources deferred or avoided by energy efficiency investments. The Commission also discussed the relevancy of looking at comparable earnings opportunity from the perspective of earnings rates based on “equivalent performance” rather than investment costs. In addition, the Commission carefully considered how best to compare earnings opportunity from energy efficiency and supply-side resources in the context of their different (and changing) relative risk/reward profiles. In addition to who funds the initial investment, the Commission identified other dimensions to relative risk that it needed to consider, including how shareholder earnings vary with project performance and who bears the risk of non cost-effective investments.⁹

All those planning to be actively involved in this phase of the proceeding should familiarize themselves with the Commission’s discussion of these and other incentive mechanism design issues in D.94-10-059. In addition, as discussed at the PHC, several of the exhibits developed at the ALJ’s request in R.91-08-003/I.91-08-002 and presented in D.94-10-059 provide comparison information or analysis of alternative design proposals for a risk/reward incentive mechanism in a very useful, concise format.¹⁰ These are described below.

⁹ D.94-10-059, 57 CPUC 2d, 1, beginning at 13. See also a summary of this decision in Attachment 2 of D.03-10-057 (in A.00-05-002 et al), pp. 7-12 and Appendix 1.

¹⁰ A complete listing of all the exhibits in R.91-08-003/I.91-08-002 is available in the Commission’s Central Files, as are hard copies of all the formal files for this docket, including exhibits, testimony, rulings and briefs.

- (a) Figures 1-A and 1-B in D.94-10-059 (57 CPUC 2d at 18) from Exhibit 345. Figure 1-A presents a graph of potential earnings and penalties as a function of performance (“shared savings curve”). Figure 1-B graphically illustrates the potential earnings and penalty levels resulting from that shared savings curve, for a “typical portfolio” based on estimated 1994 program costs and benefits.
- (b) Tables 7 and 8 in D.94-10-059 (57 CPUC 2d 1 at 53, 59 and also reproduced in Attachment 2, Appendix 1 to D.03-10-057 issued in A.00-05-002 et al.) Table 7 presents a comparison of the earnings levels under the shared-savings incentive mechanisms proposed by the parties and adopted by the Commission with the range of earnings levels from avoided supply-side investments. Table 8 presents the earnings and penalty estimates at different levels of performance under the shared-savings mechanisms proposed by the parties and adopted by the Commission. These calculations are based on 1994 (historical) portfolio data. Both tables list the exhibits in R.91-08-003/I.91-08-002 that were used to produce them.
- (c) Exhibit 340 in R.91-08-003/I.91-08-002 presents a comparison exhibit of parties’ proposals by issue. While not all of the issues addressed in this exhibit are relevant to this rulemaking (e.g., performance basis and portfolio versus program –specific issues that have resolved by the Commission in D.05-04-051), the format and listing of many of the issues are very useful.
- (d) Exhibit 390 presents an analysis of the probability of penalties under one of the proposals (Panel 1) in R.91-08-003/I.91-08-002.

I request that interested parties discuss among themselves how best to arrange the joint preparation of similar documents under (a) through (c) above so that they can be served electronically (and posted to the web) prior to the start of workshops.¹¹ *In particular, the numerical evaluation and comparison of proposals should be based on a common set of energy efficiency cost and savings information based on projected total costs, program spending and savings for the 2006-2008 program cycle, e.g., the compliance filing information.* This cost and savings data (by utility) for the type of comparison tables/exhibits indicated above should be established and provided to interested parties as soon as possible.

In addition, the utilities will need to provide information on the earnings rates associated with their supply-side procurement opportunities so that a comparison of those earnings levels with the target earnings levels under proposed risk/reward incentive mechanisms can be presented and discussed in the workshops (see Table 7 discussed in (b) above). *Information on the risk and reward profiles of utility supply-side resource options also needs to be provided so that it may be considered in establishing the appropriate level of earnings potential under a risk/return incentive mechanism for energy efficiency.*

(See discussion above and D.94-10-059 reference in footnote 8.)

ALJ Gottstein shall designate one or more of the utilities to organize this effort, and be in contact with her on the format and distribution of such pre-workshop material. In Attachment 4 to this ruling, ALJ Gottstein provides

¹¹ As the proposals are further refined after the workshops (see Section 3 below), proponents of a particular risk/reward incentive mechanism will need to prepare an analysis of the probability of penalties under their proposed incentive design. The analysis presented in Exhibit 390 referred to under (d) above may provide a useful framework for such an analysis, or other approaches may be used.

further direction to the utilities and interested parties in preparation for the workshop process described in Section 3.

B. Phase 2: EM&V

In the EM&V phase of this proceeding, the Commission will continue to augment and/or refine EM&V protocols and study plans, as needed, for the evaluation of energy efficiency performance for portfolio and program planning, performance basis updating and resource planning purposes. As discussed in D.05-09-043, in this phase the Commission will also explore timing and baseline issues related to the calculation of the performance basis for codes and standards work, and related EM&V activities.¹²

A myriad of EM&V activities require ongoing attention during the 2006-2008 program cycle, including: (1) developing remaining process and review protocols for post-2005 programs, (2) finalizing detailed EM&V study plans for all 2006-2008 programs and associated Requests for Proposals for EM&V contractors, (3) updating the Database for Efficiency Resources (DEER) using the results of ex post (post-installation) measurement studies, (4) informing resource planners of the ex post study results and updated savings estimates for energy efficiency, (5) coordinating the study parameters for the 2005 load impact study being performed for the low-income energy efficiency program with the EM&V efforts underway in this proceeding, and (6) addressing ongoing EM&V contract and data management activities. In D.05-09-043, the Commission also identified certain timing issues for calculating the performance basis for C&S

¹² D.05-09-043, *mimeo.*, pp. 130-134, and Attachment 10.

advocacy work that will also need to be considered in this phase of the proceeding.¹³

By D.05-04-051, the Commission directed that EM&V protocols be developed under an expedited review process, so they can be put in place as quickly as possible during the 2006-2008 program cycle. As directed by the Commission in the OIR, this expedited review process for ongoing EM&V protocol development is retained for this rulemaking.¹⁴

C. Phase 3: Refinements to Policy Rules and Reporting Requirements

By D.05-04-051, the Commission updated the existing Energy Efficiency Policy Manual to reflect policy rules (Policy Rules) that articulate Commission objectives for energy efficiency and that provide guidance to the utility program administrators, program implementers and interested parties for the development of program portfolios for 2006 and beyond. Among other things, the Policy Rules describe threshold requirements for cost-effectiveness, and discuss how to calculate and present cost-effectiveness results for our consideration. They also summarize the Commission's determinations in D.05-01-055 regarding competitive bidding, advisory groups, affiliate rules and other administrative structure issues. In addition, the Policy Rules describe the Commission's expectations regarding the information that program administrators will file with their program planning applications and during

¹³ D.05-09-043, *mimeo.*, p. 133, and Attachment 10, pp. 3-4.

¹⁴ For a discussion of the required protocols and expedited review process established in R.01-08-028, see D.05-04-051, pp. 67-73, Ordering Paragraphs 11-15; see also *Administrative Law Judge's Ruling on EM&V Protocol Issues*, September 2, 2005, pp. 15-20; *Administrative Law Judge's Ruling Adopting Protocols for Process and Review of Post-2005 EM&V Activities*, January 11, 2006, pp. 1-3, Attachment 1.

program implementation. They also describe the process for updating the Energy Efficiency Policy Manual in the future, provide a guide to reference documents and include a list of common terms and definitions.¹⁵

This rulemaking will be the forum for considering refinements to the Policy Rules using the informal or formal procedural vehicles provided for in Policy Rule XI. As recognized in the OIR, I cannot anticipate at this time the precise scope of these refinements. However, the Commission has recently identified one area to explore further; namely, the embedded (or “upstream”) energy savings associated with water efficiency, as follows:

“We believe that the energy efficiency rulemaking, where we address policy rules and definitions for energy efficiency applications on a generic basis, is the appropriate forum for considering these embedded energy savings issues. Consistent with the procedures we have established for updating those rules and definitions [footnote omitted], we will direct the Assigned Commissioner to explore the issue of counting embedded energy savings associated with water efficiency by informal or formal procedural vehicles in our rulemaking proceedingWe recognize that there are many tasks and priorities for the coming weeks and month’s set forth in today’s decision, and therefore leave to the Assigned Commissioner to determine the appropriate schedule for considering this issue further.”¹⁶

ALJ Gottstein and I discussed this issue further at the PHC and determined that the focus of workshops and subsequent written comments should be on the following issues:

- (1) Should the Commission’s Policy Rules be modified to include as measure/program benefits the embedded

¹⁵ See D.05-04-051, Attachment 3.

¹⁶ .05-09-043, *mimeo.*, pp. 168-169.

(upstream) energy savings associated with energy efficiency measures that also reduce water usage (e.g., clothes washers that save both energy and water)? Why or why not?

- (2) If so, what approach (methodology and rigor) should be taken for counting those savings on an *ex ante* (forecasted) basis and for verifying and truing up those savings *ex post* (after measure installation)? Should this counting be undertaken for the 2006-2008 program cycle, or on a prospective basis when embedded savings are incorporated into the potentials studies and the updated savings goals for 2009-2011? Are there other key implementation issues that need to be addressed?

These two general areas of inquiry speak to the measures and programs that the energy utilities will be administering under current authorized energy efficiency portfolio funding, which is the logical focus at this stage in the proceeding. Drawing from the pre-PHC workshop comments, Attachment 1 poses a list of more specific issues related to these general questions that should be considered at the informal workshops and in written comments discussed in Section 3 below. All efforts should be made to build on the information developed in previous forums that have addressed similar issues, such as the joint CPUC/CEC symposium, Improving the Efficiency of California Water and Energy Systems, held on March 28, 2006.

As I stated at the PHC, at some point in this proceeding or other forum, as appropriate, the Commission should begin looking at the broader context for water-related savings, including the implementation of new water conservation measures not currently undertaken by either energy or water utilities, as well as related issues such as co-funding. Therefore, during the workshop process described below, the utilities and interested participants should also spend some time addressing the process (rather than the substance) for embarking on a Commission inquiry into these matters.

Finally, as discussed in the OIR, the ALJ issued a ruling on February 21, 2006 adopting the “first generation” of post-2005 reporting requirements under

the Policy Rules and directed that further work be undertaken by Energy Division to develop an annual report format during the fall of 2006.¹⁷ The development of that report format and ongoing refinements to reporting requirements will also be undertaken in this phase of the proceeding.

**D. Phase 4: Updates to Energy Efficiency
Potential Studies and Savings Goals**

In this rulemaking, we will also update the energy efficiency savings goals adopted in D.04-09-060 in preparation for the 2009-2011 program cycle. For this purpose, Energy Division and California Energy Commission (CEC) staff¹⁸ have been directed to prepare recommendations for such adjustments “based on updated savings potentials studies, accomplishment data, changes to mandatory efficiency standards and other evaluation studies and factors that staff deems appropriate.”¹⁹ During this process, we will also explore the questions posed in D.05-09-043 regarding the manner in which the baseline for these future potential studies should be established, and the related issue of how C&S advocacy work should count towards the goals established for subsequent program cycles.²⁰

¹⁷ *Administrative Law Judge's Ruling on Reporting Requirements*, February 21, 2006 in R.01-08-028, p. 3.

¹⁸ The Assigned Commissioner, the Chief ALJ, and the Director of the Energy Division shall work with the CEC to define the PUC and CEC staffs' (collaborative staff) respective roles and responsibilities.

¹⁹ D.04-09-060, Ordering Paragraph 3.

²⁰ D.05-09-043, *mimeo.*, p. 132 and Attachment 10.

E. Phase 5: Implementation of 2006-2008 Portfolio Plans and Planning Process for 2009-2011 Program Cycle

Under the post-2005 administrative structure for energy efficiency, utility program administrators, their advisory groups, and collaborative staff will meet on an ongoing basis throughout the implementation of 2006-2008 portfolio plans, as well as during the development of 2009-2011 portfolio plans that will be submitted by the utilities for Commission consideration. As directed in our reporting requirements for energy efficiency, utility program administrators will submit monthly, quarterly and annual reports to Energy Division that will provide the Commission and all interested parties with an ongoing understanding of how the portfolios are being implemented.²¹ I direct today that the utilities also post these reports on a common website, with notice of their availability to all parties to this proceeding and to their program advisory and peer review groups.

This rulemaking will serve as the procedural forum for notices, rulings or other determinations, as needed, for such activities that occur over the span of this rulemaking. This includes consideration of the advisory group structure and process, as directed in D.05-01-055, as well as recommendations made by the utility peer review groups during 2006-2008, such as those included in the peer review group reports filed with the utilities' compliance advice letters.

In addition, this rulemaking will address utility and other efforts associated with the implementation of Executive Order S-20-04 (Green Buildings Initiative), which seeks to increase energy efficiency in State-owned and other commercial buildings throughout California.

²¹ See: *Administrative Law Judge's Ruling on Reporting Requirements* in R.01-08-018, February 21, 2006, Attachment A.

F. Phase 6: Transition Issues and Filings Related to Pre-2006 Programs

The Commission closed R.01-08-028 when it opened this proceeding. In doing so, the Commission recognized that there are some outstanding EM&V and reporting issues related to 2004-2005 energy efficiency programs that may need to be addressed during the transition to the implementation of the utilities' 2006-2008 portfolio plans. In particular, for the 2004-2005 programs the Commission required ALJ approval of final evaluation plans and contractor selection for statewide programs and overarching studies.²² Some of the contractor selections are still underway for these evaluation activities. Evaluation reports for 2005 program activities will continue to be submitted to the Commission, as they are completed, and a docket will need to be identified for that purpose. This rulemaking will now serve as the procedural forum for these and other transition issues or filings related to pre-2006 energy efficiency programs that were to be addressed in R.01-08-028.

3. Procedural Schedule and Notice of Phase 1 Workshop

Below, I describe the procedural schedule and general timeline for the resolution of issues in each of the phases described in this ruling. As reflected in the timelines discussed below, the nature of the issues to be addressed in Phases 2-5 requires that this proceeding remain open beyond the 18 month period specified in Public Utilities Code § 1701.5. In particular, the activities related to EM&V (Phase 2) are ongoing throughout the three-year program cycle and, therefore, issues regarding policy and protocols for those activities are likely to arise through calendar year 2008. Similarly, refinements to Policy Rules

²² Ordering Paragraph 13 of D.03-12-060, as modified by D.04-02-059.

(Phase 4) may be required beyond 18 months from the issuance of the OIR, based on experience gained during the program cycle. The development of updated savings goals for the 2009-2011 program cycle in Phase 3 will require us to undertake potentials studies with significant lead times to scope and contract for, and then many months to complete. Once completed, these studies and the resulting staff recommendations will also be subject to public review and written comment. Finally, the resolution of all Phase 5 issues will, by definition, require a timeframe that parallels the current three-year program cycle (2006-2008).

In view of the above, I specify today pursuant to § 1701.5(b) that this proceeding will remain open through calendar year 2008 in order to enable the Commission to effectively address all the issues. The resolution date for this proceeding is by December 31, 2008.

A. Phase 1: Risk/Return Incentive Mechanism

My intent is to present a decision for the Commission's consideration on Phase 1 issues as early as possible during the first quarter of 2007. We will proceed with Phase 1 workshops as follows:

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|-------------------|--|
| May – early June: | Parties meet and confer informally on Phase 1 issues and risk/return incentive mechanism proposals. |
| June 16, 2006: | Pre-workshop written comments on Phase 1 issues and preliminary proposal for incentive mechanism filed and served. |
| June 26-28, 2006: | Workshop to discuss Phase 1 issues/preliminary proposals (led by ALJ) |

All three days of the Phase 1 workshop will be held in the Commission's Training Room A at 505 Van Ness Avenue, San Francisco. The first day of the

workshop will begin at 10:00 a.m. and end at 5:00 p.m. The second and third days will begin at 9:00 a.m. and end at 5:00 p.m. ALJ Gottstein will be leading the workshop with assistance from Chris Villarreal from the Commission's Strategic Planning Division. The workshop will not be webcast, accessible by phone or transcribed.

I am inclined to proceed with the suggestion made by DRA at the PHC regarding the next steps for Phase 1, namely to have parties further refine their proposals during the rest of the summer through informal meetings, and then reconvene at a second workshop in September to present and discuss the refined proposals. However, ALJ Gottstein or I will make a final determination on these next steps at the close of the June workshops or shortly thereafter.

B. Phase 2: EM&V

The specific timeline for resolving all Phase 2 EM&V-related issues is based on current Energy Division work plans. The work needed by Energy Division and its contractors to fulfill the EM&V responsibilities discussed above is ongoing, and therefore I anticipate that EM&V-related issues will continue to be addressed throughout the 2006-2008 program planning cycle.

Per our adopted EM&V protocols, Joint Staff will present the results of EM&V studies for the 2006-2008 program cycle as follows:

- August 2007: The **2006 Verification Report** that verifies through December 2006 the number and types of measure installations, services rendered and program costs;
- March 2008: The **Interim Performance Basis Report** that verifies through July 2007 performance basis parameters that include:
 - (1) energy savings and peak demand reductions at the measure/unit, program and portfolio level, (2) load factors/daily load shapes, (3) incremental program costs, (4) net-to-gross ratios);
- August 2008: The **2007 Verification Report** that verifies through December 2007 the number and types of measure installations, services rendered and program costs;
- August 2009: The **2008 Verification Report** that verifies through December 2008 the number and types of measure installations, services rendered and program costs;

- March 2010: The **Final Verification and Performance Basis Report** that will verify and true-up performance parameters as required under the adopted EM&V protocols for the 2006-2008 program cycle.

Attachment 3 presents the Joint Staff reporting schedule in tabular form as well as a discussion of how each performance parameter will be updated.

C. Phase 3: Refinements to Policy Rules and Reporting Requirements

As discussed during the PHC, the utilities and interested parties will move forward with considering the embedded (upstream) energy savings associated with measures that save both energy and water through an informal workshop during the first half of July. Pacific Gas and Electric Company (PG&E) and the Natural Resources Defense Council have agreed to jointly work on developing the agenda and making the logistical arrangements for that workshop.

The purpose of this informal process is to enable interested parties to gather and share information that would assist them in preparing written comments that address the general questions described in Section 2 and the specific issues presented in Attachment 1. Opening comments on these questions/issues are due July 24, 1006, and reply comments are due August 11, 2006.

I intend to address the embedded savings issues as soon as practicable during 2006 or early 2007, recognizing that there are other priorities in this proceeding, particularly, with respect to Phase 1 issues.

There may be other issues that are raised with respect to our Policy Rules that the Commission may need to consider during the 2006-2008 program cycle in order to refine its direction to the utility program administrators, implementers and other stakeholders in energy efficiency. I cannot predict at this time what those issues will be, or how we will need to prioritize them in the

context of all the important issues to address in this rulemaking. Therefore, I have indicated that we need to leave this proceeding open beyond 18 months to address policy rules and related issues that may come up during the implementation stage of the 2006-2008 program cycle, and as we undertake the planning process for 2009-2011.

There is, however, one specific reporting requirements issue that has already be identified for resolution this fall, namely, development of the annual report format and information requirements for utility administrators. As directed in the February 21, 2005 ALJ ruling in R.01-08-028, Energy Division will post draft annual reporting requirements to the Commission website by September 15, 2006. As soon as practicable thereafter, Energy Division shall serve a notice of availability to the service list in this proceeding. Today's ruling establishes the due date for comments on the draft, as follows: Opening comments are due 10 workdays after the draft report is noticed and reply comments are due five workdays thereafter.

D. Phase 4: Updates to Energy Efficiency Potential Studies and Savings Goals

At the PHC, we discussed the need to ensure that updates to the savings goals are available at the start of the planning process for the 2009-2011 program cycle. Energy Division and CEC staff are working collaboratively on a timeline for this purpose, and stated that they will present this timeline to me and ALJ Gottstein within 30 days from the PHC.²³ In consultation with staff, ALJ Gottstein or I will notify parties to this proceeding of the schedule for this phase of the proceeding.

²³ RT at 66.

**E. Phase 5: Implementation of 2006-2008
Portfolio Plans and Planning Process
for 2009-2011 Program Cycle**

With respect to implementation of the 2006-2008 portfolio plans, I direct today that the utilities file a joint report by June 15, 2006 that compares their best estimates of forecast savings for State-owned and commercial buildings over the 2006-2008 program cycle with the goals of the Green Building Initiative. This report should also be posted to a common website with notice to all parties to this proceeding and the utilities' program review and peer review groups, along with the reports required under our adopted reporting requirements.

As discussed at the PHC, ALJ Gottstein and I intend to hold a second PHC in early January, 2007 in order to establish the schedule for the 2009-2011 planning process. The timeline for this phase of the proceeding will necessarily extend until the utilities file their applications for 2009-2011 portfolio plans and funding levels, that is, until mid-2008.

**F. Phase 6: Transition Issues and
Filings Related to Pre-2006 Programs**

These transition issues and filings will be addressed as they arise.

4. Category of Proceeding

The OIR issued on April 17, 2006 preliminarily determined that the subject matter should be divided into two phases for the purpose of establishing the category of this proceeding.²⁴ No objections were filed or raised at the PHC. Accordingly, I affirm the preliminary two-phase categorization of this proceeding. For this purpose, "Phase A" consists of the Phase 1 and Phase 2 issues identified above (Shareholder Risk/Reward Incentive Mechanism and

²⁴ See OIR, R.06-04-010, April 17, 2006, Section III.

EM&V), and will be categorized as “ratesetting” as that term is defined in Rule 5(c). “Phase B” consists of all other issues identified in this scoping memo (under Phases 3-6 described above) and will be categorized as “quasi-legislative,” as that term is defined in Rule 5(d). This ruling, only as to category, is appealable under the procedures in Rule 6.4.

5. Need For Evidentiary Hearings and Principal Hearing Officer

The need for evidentiary hearings was raised by some interested parties with respect to the resolution of issues in Phase 1, the development of a risk/return incentive mechanism. In particular, some parties recommended that I schedule evidentiary hearings now in anticipation that there could be remaining disputes over that mechanism after the workshop process (see below) that will need to be resolved in evidentiary hearings. For the reasons discussed by ALJ Gottstein and myself at the PHC, I am not persuaded that evidentiary hearings will be required to resolve the issues in Phase 1, even if there are remaining disputes over the design of that mechanism among the parties when the workshop process has ended.²⁵

No parties suggest that evidentiary hearings are required to resolve the issues in any other phase of this proceeding, and I believe that all of those issues can be resolved without them. I therefore determine today that no evidentiary hearings are required for Phases 2 through 6, as defined above. I will make a final determination on the need for hearings in Phase 1 when the Phase 1 workshop process described in Section 3 is completed. If evidentiary hearings are required, this ruling designates ALJ Meg Gottstein as the principal hearing officer.

²⁵ RT, PHC May 9, 2006, pp. 11, 22-26.

6. Service List and Service Requirements

A new service list was established at the May 9, 2006 PHC and is posted to the Commission's website. All comments required by this ruling shall be formally filed at the Commission. All notices, comments and other submittals required by this ruling shall be served on the service list in this proceeding pursuant to the Electronic Service Protocols attached to the OIR and consistent with Rules 2.3 and 2.3.1. Please note that those protocols require that ALJ Gottstein and I are also served hard copies of all submittals.

7. Ex Parte Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in *ex parte* communications and the reporting of such communications. Attachment 2 sets forth Rule 7 and Rule 7.1 *ex parte* restrictions and reporting requirements for the ratesetting phases of this proceeding and the quasi-legislative phases of this proceeding.

IT IS RULED that:

1. The scope of this proceeding is set forth in this ruling. The issues shall be addressed in six phases, as identified above.
2. The schedule for this proceeding is set forth in this ruling. This ruling may extend up to December 31, 2008. The assigned ALJ may make any revisions to this schedule necessary for the fair and efficient management of the proceeding.
3. As described in this ruling, Phase 1 will proceed with workshops, as follows:

May – early June:	Parties meet and confer informally on Phase 1 issues and risk/return incentive mechanism proposals.
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June 16, 2006:	Pre-workshop written comments on Phase 1 issues and preliminary
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proposal for incentive mechanism
filed and served.

June 26-28, 2006: Workshop to discuss Phase 1
issues/preliminary proposals

4. All three days of the Phase 1 workshop will be held in the Commission's Training Room A at 505 Van Ness Avenue, San Francisco. The first day of the workshop will begin at 10:00 a.m. and end at 5:00 p.m. The second and third days will begin at 9:00 a.m. and end at 5:00 p.m.

5. As discussed in this ruling, the utilities are required to jointly file a report by June 15, 2006 that compares their best estimates of forecast savings in State-owned and commercial buildings over the 2006-2008 program cycle with the 20% savings goal of Executive Order S-20-04 (Green Buildings Initiative). The utilities shall post this report on a common website, with notice of its availability to all parties to this proceeding and to their program advisory and peer review groups. In addition, the utilities shall similarly post and notice the reports required pursuant to the ALJ's February 21, 2006 ruling in R.01-08-028 on reporting requirements.

6. As discussed in this ruling, the utilities and interested parties will move forward with considering the embedded (upstream) energy savings associated with measures that save both energy and water through an informal workshop process during the first half of July. Interested parties shall file opening comments on the issues described in Section 2 and Attachment 1 by July 24, 2006. Reply comments are due by August 11, 2006.

7. The February 21, 2005 ruling in R.01-08-028 directs Energy Division to post draft annual reporting requirements to the Commission's website by September 15, 2006. As soon as practicable thereafter, Energy Division shall serve a notice of availability to the service list in this proceeding. Opening

R.06-04-010 DGX/MEG/jva

comments are due 10 workdays after the draft is noticed and reply comments are due five workdays thereafter.

8. Energy Division and CEC shall present a timeline for updates to energy efficiency potentials studies and savings goals to ALJ Gottstein and me within 30 days from the PHC. In consultation with staff, ALJ Gottstein or I will notify parties to this proceeding of the schedule for Phase 4 of the proceeding.

9. As discussed in this ruling, Phase 1 and Phase 2 of this proceeding are categorized as ratesetting. Phases 3-6 are categorized as quasi-legislative.

10. Evidentiary hearings are not required to resolve the issues in Phases 2 through 6 in this proceeding. A final determination on the need for hearings in Phase 1 will be made when the Phase 1 workshop process described in this ruling is completed.

11. If it is determined that evidentiary hearings are required in Phase 1, this ruling designates ALJ Meg Gottstein as the principal hearing officer.

12. The utilities and all interested parties in Phase 1 issues shall discuss among themselves how best to arrange the preparation of the comparison tables/documents discussed in this ruling so that they can be served (and posted to the web) prior to the start of workshops. In particular, the numerical evaluation and comparison of incentive mechanism proposals should be based on a common set of energy efficiency cost and savings information based on projected total costs, program spending and savings for the 2006-2008 program cycle, e.g., the compliance filing information. This cost and savings data (by utility) together with the earnings rates and risk and reward profiles of utility supply-side resource options discussed in this ruling shall be provided to interested parties as soon as possible. ALJ Gottstein shall designate one of the utilities to take the lead in organizing such an effort, and may provide further direction to the utilities and interested parties as needed.

13. Unless otherwise indicated, all notices, comments and other submittals required by this ruling shall be served on the service list in this proceeding pursuant to the Electronic Service Protocols attached to the OIR and consistent with Rules 2.3 and 2.3.1. Hard copies shall also be served on ALJ Gottstein and the Assigned Commissioner, pursuant to those protocols.

14. This proceeding is subject to Rule 7, which specifies standards for engaging in *ex parte* communications for the ratesetting phases and the quasi-legislative phases, and the reporting of such communications.

Dated May 24, 2006, at San Francisco, California.

/s/ DIAN M. GRUENEICH

Dian M. Grueneich
Assigned Commissioner

ATTACHMENT 1
EMBEDDED WATER ENERGY SAVINGS
ISSUES FOR CONSIDERATION DURING WORKSHOPS
AND IN WRITTEN COMMENTS

The workshops and subsequent written comments on the topic of embedded (upstream) water energy savings should focus on the following areas of inquiry:

- (1) Should the Commission's Policy Rules be modified to include as measure/program benefits the embedded (upstream) energy savings associated with energy efficiency measures that also reduce water usage (e.g., clothes washers that save both energy and water)? Why or why not?
- (2) If so, what approach (methodology and rigor) should be taken for counting those savings on an *ex ante* (forecasted) basis and for verifying and truing up those savings *ex post* (after measure installation)? Should this counting be undertaken for the 2006-2008 program cycle, or on a prospective basis when embedded savings are incorporated into the potentials studies and the updated savings goals for 2009-2011? Are there other key implementation issues that need to be addressed?

In addition, the utilities and interested participants should also address the process (rather than the substance) for embarking on an inquiry into the broader context for water-related savings, including the implementation of new water conservation measures not currently undertaken by either energy or water utilities, as well as related issues such as co-funding.

To this end, interested parties should specifically address the following questions:

1. To date, the energy savings from efficiency programs have been limited to on-site end-use savings. What differentiates "embedded" energy savings from water

efficiency from “embedded” energy savings associated with other measures?

2. In principle, should the IOUs be allowed to “count” the embedded energy savings in water efficiency toward their savings goals? In calculating performance basis and evaluating portfolio cost-effectiveness? Why or why not?

If so, when should this counting begin (e.g., for the current 2006-2008 program cycle, for 2009 and beyond?)

3. If these savings are to be included, what are the appropriate embedded energy savings from water efficiency numbers to use? We note that the California Energy Commission staff has prepared a report, “California’s Water-Energy Relationship,”¹ with estimated values – are these numbers appropriate to use? What other sources of this information are currently available?
4. How should various “counting” issues be resolved? For example: Are there further upstream energy refinements by the geographic area where the water efficiency is implemented? Are there cross-IOU territory counting issues if water efficiency measures are implemented within a water utility’s service area that overlaps with more than one IOU?
5. Would it be appropriate to establish a different counting procedure for the 2006-2008 program cycle versus future cycles?
6. How should EM&V be handled for these embedded energy savings in water efficiency? Would it be feasible to use preliminary *ex ante* estimates of water savings that are then trued-up using ex-post numbers from an

¹ Publication CEC-700-2005-011-SF, November 2005. See <http://www.energy.ca.gov/2005publications/CEC-700-2005-011-SF.PDF>

additional evaluation study overseen by the Energy Division?

7. Should embedded energy savings from water efficiency be incorporated into the energy efficiency potential studies? Should a separate potential study be conducted on embedded energy savings in water efficiency?
8. Are there equity issues raised by counting these embedded energy savings where some of the benefit due to reduced water pumping requirements would accrue to entities which do not pay the efficiency surcharges in some or even any of their electrical usage? If so, how should the Commission address them? ²
9. Depending on your response to the above questions, how should the Energy Efficiency Policy Manual (Policy Rules) be modified? Parties should provide specific suggested language.

What process should the Commission consider for embarking on an inquiry into the broader context for water-related savings, including the implementation of new water conservation measures not currently undertaken by either energy or water utilities, as well as related issues such as co-funding? Be specific as to the procedural forum and steps/timeline for such an inquiry.

² See PG&E's PHC Statement, May 4, 2006, pp. 2-4.

(END OF ATTACHMENT 1)

ATTACHMENT 2

RESTRICTIONS AND REPORTING OF *EX PARTE* COMMUNICATIONS

7. (Rule 7) Ex Parte Communications--Applicable Requirements

(a) The requirements of this subsection shall apply to ex parte communications during the period between the beginning of a proceeding and the determination of the category of that proceeding, including the decision by the Commission on any appeal of such determination. After determination of the category, the requirements of subsection (b), (c), or (d) of this rule shall apply, as appropriate.

(1) In a proceeding initiated by application filed after January 1, 1998, the requirements of subsection (c) shall apply during the period between the filing and the Commission's preliminary determination of category pursuant to Rule 6(a)(1), after which the requirements of subsection (b), (c), or (d) shall apply, depending on the preliminary determination. After the assigned Commissioner's appealable determination of category under Rule 6(a)(3), the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(2) In a proceeding initiated by complaint filed after January 1, 1998, regardless of the complainant's proposed category for the proceeding, ex parte communications shall be prohibited until the date of service of the instructions to answer, after which the applicable requirements shall depend on the determination of category in the instructions to answer, unless and until such determination is modified by the Commission pursuant to Rule 6.4.

(3) In a proceeding initiated after January 1, 1998, by order instituting investigation or order to show cause, the requirements of subsection (b), (c), or (d) shall apply, depending on the order's determination of category, unless and until such determination is modified by the Commission pursuant to Rule 6.4.

(4) In a proceeding initiated after January 1, 1998, by order instituting rulemaking, the requirements of subsection (b), (c), or (d) shall apply, depending on the order's preliminary determination of category. After the assigned Commissioner's appealable determination of category, the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

(5) In a proceeding to which this Article applies by virtue of Rule 4(b)(2), the requirements of subsection (b), (c), or (d) shall apply, depending on the preliminary determination of category pursuant to Rule 6(d). After the assigned Commissioner's appealable determination of category, the applicable requirements shall depend on such determination unless and until it is modified by the Commission pursuant to Rule 6.4 or 6.5(a).

- (b) In any adjudicatory proceeding, ex parte communications are prohibited.
- (c) In any ratesetting proceeding, ex parte communications are permitted only if consistent with the following restrictions, and are subject to the reporting requirements set forth in Rule 7.1:
 - (1) Oral ex parte communications are permitted at any time with a Commissioner provided that the Commissioner involved (i) invites all parties to attend the meeting or sets up a conference call in which all parties may participate, and (ii) gives notice of this meeting or call as soon as possible, but no less than three days before the meeting or call.
 - (2) If an ex parte communication meeting or call is granted by a decisionmaker to any party individually, all other parties shall be sent a notice at the time that the request is granted (which shall be no less than three days before the meeting or call), and shall be offered individual meetings of a substantially equal period of time with that decisionmaker. The party requesting the initial individual meeting shall notify the other parties that its request has been granted, at least three days prior to the date when the meeting is to occur. At the meeting, that party shall produce a certificate of service of this notification on all other parties. If the communication is by telephone, that party shall provide the decisionmaker with the certificate of service before the start of the call. The certificate may be provided by facsimile transmission.
 - (3) Written ex parte communications are permitted at any time provided that the party making the communication serves copies of the communication on all other parties on the same day the communication is sent to a decisionmaker.

(4) Prohibitions on Ex Parte Communications:

(i) Prohibition of Ex Parte Communications When a Ratesetting Deliberative Meeting is Not Scheduled or When a Ratesetting Decision is Held.

In any ratesetting proceeding, the Commission may establish a period during which no oral or written communications on a substantive issue in the proceeding shall be permitted between an interested person and a Commissioner, a Commissioner's personal advisor, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, or the assigned Administrative Law Judge. Such period shall begin not more than 14 days before the Commission meeting date on which the decision in the proceeding is scheduled for Commission action. If the decision is held, the Commission may permit such communications for the first half of the hold period, and may prohibit such communications for the second half of the period, provided that the period of prohibition shall begin not more than 14 days before the Commission meeting date to which the decision is held.

(ii) Prohibition of Ex Parte Communications When a Ratesetting Deliberative Meeting is Scheduled:

In all ratesetting proceedings in which a hearing has been held, a proposed decision has been filed and served, and a Ratesetting Deliberative Meeting has been scheduled, there shall be a prohibition on communications as provided in this subsection.

The first day of the prohibition on communications will be the day of the Ratesetting Deliberative Meeting at which the proposed decision is scheduled to be discussed and will continue through the conclusion of the Business Meeting at which a vote on the proposed decision is scheduled. If a proposed decision is held at the Business Meeting, when the hold is announced, the Commission will also announce whether and when there will be a further prohibition on communications, consistent with the provisions of subparagraph (i).

(d) In any quasi-legislative proceeding, ex parte communications are allowed without restriction or reporting requirement.

(e) The requirements of subsections (b) and (c) of this rule, and any reporting requirements under Rule 7.1, shall cease to apply, and ex parte communications shall be permitted, in any proceeding in which (1) no timely answer, response, protest, or request for hearing is filed after the pleading initiating the proceeding, (2) all such responsive pleadings are withdrawn, or (3) there has been a final determination that a hearing is not needed in the proceeding. However, if there has been a request for hearing, the requirements continue to apply unless and until the request has been denied.

(f) Ex parte communications concerning categorization of a given proceeding are permitted, but must be reported pursuant to Rule 7.1(a).

(g) When the Commission determines that there has been a violation of this rule or of Rule 7.1, the Commission may impose penalties and sanctions, or make any other order, as it deems appropriate to ensure the integrity of the record and to protect the public interest.

7.1. (Rule 7.1) Reporting Ex Parte Communications

(a) Ex parte communications that are subject to these reporting requirements shall be reported by the interested person, regardless of whether the communication was initiated by the interested person. An original and seven copies of a "Notice of Ex Parte Communication" (Notice) shall be filed with the Commission's San Francisco Docket Office within three working days of the communication. The Notice shall include the following information:

(1) The date, time, and location of the communication, and whether it was oral, written, or a combination;

(2) The identities of each decisionmaker involved, the person initiating the communication, and any persons present during such communication;

(3) A description of the interested person's, but not the decisionmaker's, communication and its content, to which description shall be attached a copy of any written, audiovisual, or other material used for or during the communication.

(b) These reporting requirements apply to ex parte communications in ratesetting proceedings and to ex parte communications concerning categorization. In a ratesetting proceeding, communications with a Commissioner's personal advisor also shall be reported under the procedures specified in subsection (a) of this rule.

(END OF ATTACHMENT 2)

ATTACHMENT 3

Performance Basis Protocol For Verifying Performance Basis Parameters¹ And Joint Staff's Reporting Schedule

This protocol identifies when Joint Staff plans to verify various parameters that are used to calculate the performance basis for each portfolio administrator for the planning cycle 2006-2008. Joint Staff plans to provide two types of reports to verify the level of energy and peak savings achieved by programs and the performance basis for each administrator's portfolio of programs:

- A. Verification reports - Three annual verification reports will serve to verify the number of measure installations and portfolio and program costs from the previous program year in August of 2007, 2008, and 2009.
- B. Interim and Final Performance Basis Reports - These reports will provide Joint Staff's interim and final estimates of the net performance basis achieved for two snapshots in time: the first 18 months of the program cycle in the interim report and the full 36 months of the cycle in the final performance basis report. These reports will also provide information on the annual and cumulative levels of energy and peak savings achieved for this same time period.

The interim performance basis report will be published in March of 2008. Due to timing constraints, the interim report will not have sufficient data to confirm or verify all of the *ex ante* estimates of energy savings, load shapes and savings. In some cases, this will mean that *ex ante* estimates made at the time of program authorization will be used in the calculation of the interim performance basis. However evaluation consultants will be asked to develop evaluation plans that will update key parameters identified as uncertain in the planning process within this interim document. Thus, the interim document could contain updated parameter estimates based on 18 months of data collection for some or all of the following parameters:

- 1. Measure Installations
- 2. Program Costs
- 3. Unit Energy Savings/Measure Installation by Strategy
- 4. Program Level Estimates of Gross Energy Savings (product of 1 and 3)
- 5. Net-to-Gross Ratios by Program Strategy and/or Measure
- 6. Program Level Estimates of Net Energy Savings (produce of 4 and 5)
- 7. Load Factors or Daily Load Shapes used to transform annual savings estimates into peak savings estimates
- 8. Incremental Measure Costs

¹ From: *Administrative Law Judge's Ruling Adopting Protocols for Process and Review of Post-2005 Evaluation, Measurement and Verification (EM&V) Activities* issued on January 11, 2006 in R.01-08-028, Attachment 2.

Evaluation contractors will not be asked to develop updated estimates of Avoided Costs or the Expected Useful Lives of Measures for use in the performance basis calculation. These values will be taken from the *ex ante* filings for useful life of measures and from the 2006 update of avoided cost values, per the Commission's direction.²

The final performance basis report will contain updated estimates for all of the seven parameters listed above for the 2006-2008 cycle. This report will be published on March 1, 2010. Consistent with the interim report, the final report will use *ex ante* values for avoided costs and expected useful lives of measures in the calculation of final performance basis for the administrator. Joint Staff will present updated estimates of performance basis, using a mix of verified and *ex ante* parameters, in each of the reports listed below.

The parameters to be verified in each of these reports are summarized in the following table. A more detailed description of how each parameter will be verified is presented after the table.

² Per D.05-09-043, the program administrators are required to use the *ex ante* values for expected useful lives that were posted to the Commission's Database For Energy Efficiency website in July and August, 2005. (See p. 101 of that decision.) See also Section 8.8 of D.05-09-043 for a discussion of the avoided cost/E3 calculator refinements that will be undertaken in the avoided cost rulemaking (R.04-04-025) to update the *ex ante* forecasts of avoided cost for the 2006-2008 program cycle.

Evaluation Results Joint Staff Reporting Schedule

<i>Report Date</i>	August 2007	March 2008	August 2008/9	March 2010
<i>Report Title</i>	2006 Verification Report	Interim Performance Basis Report	2007/8 Verification Report	Final Verification and Performance Basis Report
<i>Parameter</i>	<i>Report Scope</i>			
Verification of Measure Installations and Services Rendered	Jan - Dec 2006	NA	Jan - Dec 2007/8	PY 2006 - PY 2008
Program Costs	Jan - Dec 2006	NA	Jan - Dec 2007/8	PY 2006 - PY 2008
Measure or Unit Energy Savings and Peak Demand Reductions	NA	Jan 2006 – July 2007 (where data are available)	NA	PY 2006 - PY 2008
Program/Portfolio Energy Savings and Peak Demand Reductions	NA	Jan 2006 – July 2007 (where data are available)	NA	PY 2006 - PY 2008
Load Factors/Daily Load Shapes	NA	Jan 2006 – July 2007 (where data are available)	NA	PY 2006 - PY 2008
Incremental Measure Costs	NA	Jan 2006 – July 2007 (where data are available)	NA	PY 2006 - PY 2008
Avoided Costs	NA	Jan 2006 – July 2007 (Verify correct values are used for performance basis calculation)	NA	PY 2006 - PY 2008 (Verify correct values are used for performance basis calculation)
Expected Useful Lives/Technical Degradation Factors	NA	Jan 2006 – July 2007 (Verify correct <i>ex ante</i> is used for performance basis calculation)	NA	PY 2006 - PY 2008 (Verify correct <i>ex ante</i> value is used)
Net-to-Gross Ratios	NA	Jan 2006 – July 2007 (where data are available)	NA	PY 2006 - PY 2008

Discussion of How Each Performance Parameter will be updated

1. Measure Installations - Program Administrators are expected to report on the number of measure installations and associated program costs throughout the 3-year program cycle. Joint Staff plans to have its contractors verify this information on measure installations by performing quality control checks on the measure installation inputs to the data base and verifying actual installations in a sample of customer premises using contact information provided by utilities. We expect Joint Staff verification efforts to lag the measure installation by 1 to 12 months, depending upon the type of project.

We expect that administrators will submit their reports to Energy Division or its EM&V contractors that include cumulative measure installations from the previous program year (2006, 2007, and 2008) on February 28th of each year.³ Joint Staff would plan to make its best effort to verify the installation counts by program and provide this interim estimate to each utility administrator on July 1st of each year and then publish the final estimate as part of its August report. Joint Staff would work with the administrators to resolve any misunderstandings or communication issues that might have led to differences in verified installations before developing an interim estimate of the performance basis for the portfolio in the August 1st report.

2. Program Costs

On an annual basis, Joint Staff plans to verify program cost estimates reported by each program administrator and will include non-confidential findings as part of its August 1st verification report.

3. Unit Energy Savings/Savings by Program Strategy - Utility program administrators have already provided estimates of the unit energy savings by measure or end-use and then used these estimates combined with forecasts of measure installations to develop program level savings estimates. Joint Staff plans to provide interim measure savings results in the first interim performance basis report in March 2008 and to provide final verification of the measure unit energy savings estimates for the entire program cycle in the final performance basis report in March 2010.

4. Program Level Estimates of Gross and Net Energy Savings

Joint Staff plans to conduct evaluations of the gross and net savings for each program in the utility portfolio. To the extent practicable, those findings will be broken out by program and/or program strategy. Interim results will be presented in the interim performance report in March 2008 and final results in March 2010.

³ The frequency of reports on measure installations (e.g., monthly/quarterly) and the data transfer process (what data is submitted by program administrators directly to Energy Division, what data is sent directly to the EM&V contractors, etc.) are established by the Reporting Requirements adopted in *Administrative Law Judge's Ruling on Reporting Requirements* issued in R.01-08-28 on February 21, 2006.

5. Load Factors or Daily Load Shapes to Transform Annual Energy Savings Estimates Into Peak Savings Estimates

Joint Staff plans to estimate the peak load impacts from a variety of programs using the Gross Demand Savings Protocols. These protocols allow the evaluators to use secondary load shape data or primary interval meter data to estimate peak savings depending on the level of rigor selected by the evaluation team. Joint Staff will make interim results from these studies on an informal basis and then finalize the estimates in the performance basis reports. These peak savings estimates will be available at the same time as the estimates of program energy savings are published. In addition, measure or end-use level savings estimates may also be produced and reported in the interim or final performance basis reports.

6. Incremental Measure Costs

Joint Staff plans to verify the utility reported estimates of incremental measure cost on a spot check or sample basis to ensure consistency with the DEER estimates. In addition, Joint Staff plans to review and verify estimates of incremental cost for large industrial and commercial energy efficiency projects where *ex ante* estimates of incremental costs were not available.

7. Avoided Costs

Joint Staff will have its contractors verify that utility performance basis calculations utilize the adopted avoided cost time series (per the 2006 Update) whenever administrators are asked to provide an estimate of the performance basis of their portfolio.

8. Expected Useful Lives of Measures

Joint Staff plans to hire contractors to estimate survival functions for a selected set of measures using guidance from the expected useful live protocol. The goal is to estimate survival functions and ultimately useful lives for those measures that are forecast to be responsible for a significant proportion of the portfolio savings but were not covered by the most recent evaluation of useful lives completed in the last three years. These estimates will be used to update the *ex ante* estimates of useful life for the next program planning cycle but not to update the useful life estimates used in the 2006-2008 program estimates.

9. Net-to-Gross Ratio

Joint Staff plans to estimate net-to-gross ratios for each of the program delivery strategies as part of its load impact evaluations for each of the major program strategy groupings. In some cases, the net-to-gross ratios will also be reported for specific measures and or end-uses associated with a given delivery strategy, as appropriate. For example, the net-to-gross ratio for a downstream rebate program focused on increasing the sales of compact fluorescent lamps, might be available for a given program year, say 2006, but would need to be updated at the end of the program cycle to account for any changes in program delivery strategies in 2007 or 2008. The availability of these net-to-gross estimates is closely linked to the schedule for releasing estimates of gross and net program energy savings in the interim and final performance basis reports. These net-to-gross ratios will be combined with estimates of gross energy savings to yield net program savings estimates in the interim and final performance basis reports.

(END OF ATTACHMENT 3)

ATTACHMENT 4

FURTHER DIRECTION TO UTILITIES AND INTERESTED PARTIES FOR THE DEVELOPMENT OF THEIR PHASE 1 COMMENTS AND WORKSHOP DISCUSSION

To further refine the direction of this ruling (Section 2.A), this attachment identifies specific information that parties are required to present *at a minimum* when submitting their preliminary proposals for a risk/reward incentive mechanism in their pre-workshop comments. The utilities and interested parties should be prepared to fully discuss this information during the June 26-28 workshops, and should ensure that the policy and technical experts most familiar with the development of the information are present at the workshop.

As discussed in this ruling, all those planning to be actively involved in this phase of the proceeding should familiarize themselves with the Commission's discussion of these and other incentive mechanism design issues in D.94-10-059. In addition, as discussed at the PHC and in this ruling, several of the exhibits developed at the ALJ's request in R.91-08-003/I.91-08-002 and presented in D.94-10-059 provide comparison information or analysis of alternative design proposals for a risk/reward incentive mechanism in a very useful, concise format.¹ These are:

- (a) Figures 1-A and 1-B in D.94-10-059 (57 CPUC 2d at 18) from Exhibit 345. Figure 1-A presents a graph of potential earnings and penalties as a function of performance ("shared savings curve"). Figure 1-B graphically illustrates the potential earnings and penalty levels resulting from that shared savings curve, for a "typical portfolio" based on estimated 1994 program costs and benefits.
- (b) Tables 7 and 8 in D.94-10-059 (57 CPUC 2d 1 at 53, 59 and also reproduced in Attachment 2, Appendix 1 to D.03-10-057 issued in A.00-05-002 et al.) Table 7 presents a comparison of the earnings levels under the shared-savings incentive mechanisms proposed by the parties and adopted by the Commission with the range of earnings levels from avoided supply-side investments. Table 8 presents the earnings and penalty estimates at different levels of performance under the shared-savings mechanisms proposed by the parties and adopted by

¹ A complete listing of all the exhibits in R.91-08-003/I.91-08-002 is available in the Commission's Central Files, as are hard copies of all the formal files for this docket, including exhibits, testimony, rulings and briefs.

the Commission. These calculations are based on 1994 (historical) portfolio data. Both tables list the exhibits in R.91-08-003/I.91-08-002 that were used to produce them.

- (c) Exhibit 340 in R.91-08-003/I.91-08-002 presents a comparison exhibit of parties' proposals by issue. While not all of the issues addressed in this exhibit are relevant to this rulemaking (e.g., performance basis and portfolio versus program -specific issues that have resolved by the Commission in D.05-04-051), the format and listing of many of the issues are very useful.
- (d) Exhibit 390 presents an analysis of the probability of penalties under one of the proposals (Panel 1) in R.91-08-003/I.91-08-002.

The following submittal requirements provide all interested parties with an understanding of the level of specificity they will need to present for their preliminary proposals so that the workshop process will be most productive. As indicated below, some of the items requested are contingent upon the availability of the information that the utilities will be providing, as discussed in this ruling. To that end, I have coordinated the follow schedule and process with the utilities:

- (1) The utilities will serve electronically the common data set of projected program costs and benefits (based on the 2006-2008 compliance filings) to all parties within a day or two from the issuance of this ruling. This data set will also include portfolio EM&V budget levels for the program cycle.
- (2) On June 9, 2006, the utilities will serve electronically to all parties their initial assessment of the effective earnings rates and risk/reward profiles of utility supply-side resource options and hold an informal meeting with all interested parties to discuss that assessment.
- (3) By June 9, 2006, the utilities will prepare templates to assist all parties in developing the figures/tables discussed below using a common format.
- (4) The utilities will serve electronically a refinement of their assessment of effective earnings rates and risk/reward profiles of utility supply-side resource options by June 21, 2006 for the workshop discussion.

The Following Information is Required For Proposed Risk/Return Incentive Mechanisms (Pre-Workshop Comments):

1. Present the “earnings/penalty curve” you propose as a function of the performance basis for the portfolio of resource programs. *Present graphically in a format similar to Figure 1-A described in (a) above showing the curve over a range of performance from -150% up to 200% of forecasted net benefits.* This graphic presentation should clearly indicate the performance earnings rate across this range of performance, and whether you are proposing to cap either earnings or penalties and if so, at what level(s). A separate graphic presentation may be appropriate for the presentation of the minimum threshold of performance that must be achieved before a utility is eligible for earnings (referred to as a “minimum performance standard” or “MPS”).

“Net benefits” are to be defined consistent with the Commission’s determination of the performance basis for resource programs, i.e., the weighted average of the total resource cost (TRC) test (2/3 weight) and the program administrator cost (PAC) test (1/3 weight).

2. Specify the programs *you* are including in the portfolio for your calculation of net benefits/performance basis (defined above) and analysis of the level of potential earnings and penalties required below. Explain how you are treating the portfolio EM&V costs in your calculation of performance basis.

Note: The calculations required for #3 and #4 below will need to be based on the common data set described in the preceding section.

3. Present the potential earnings and penalty levels graphically using a *graphic presentation similar to the Figure 1-B described in (b) above, for a range of performance from -150% to +200% of forecasted net benefits.*
4. Present the potential earnings and penalty levels for your proposal in table form similar to Table 8 referred to in (b) above for the following performance levels:
 - (a) -150%, -90%, -75% -50%, -30%, +30%, +50%, +75% , +90%, +100%, +150% and +200% of the performance basis (net benefits as defined above), and
 - (b) 50% to 200% of the savings goals in 25% intervals.

5. What is the authorized earnings recovery period under your proposal? How do you propose to link the pay out of earnings to one or more of the *ex post* verification and performance basis reports that will be issued per the EM&V protocols?
6. Further describe your proposed minimum performance standard (MPS) by answering the following questions:
 - (a) When is achievement of the MPS to be determined under your proposal? After program participation/measure installations are verified (and using *ex ante* estimates of load impacts per measure)? After load impacts are also trued up on an *ex post* basis? On another basis? Please review the Commission's consideration of alternate MPS designs in D.94-10-059 (57 CPUC 2d 1, 43-46, and Table 6) in formulating your response.
 - (b) Which savings goals (GWh, MW, Therms) need to be met under the MPS before utilities are allowed the opportunity to earn under the risk/return incentive mechanism? Should there be separate determinations/thresholds for electric and natural gas portfolio achievements?
 - (c) Should there be a dead band or uncertainty range placed around the savings goals to measure achievement of the MPS (e.g., utility will be eligible for earnings if performance is within + or - a certain percentage of the 2006-2008 savings goals), and if so, what should it be?
 - (d) What energy savings will count towards the calculation of MPS achievement under the risk/reward incentive mechanism for resource programs? In particular, for the 2006-2008 program cycle, should the 50% of C&S savings that the Commission has determined should count towards the achievement of adopted savings goals also count toward the MPS under the incentive mechanism? How do you propose to address LIEE savings that the Commission has also determined should count towards the adopted savings goals?

7. How do you propose that the performance of non-resource programs be handled for this program cycle in particular or for future cycles:
 - (a) By including all program costs and verified energy savings in the risk/reward incentive mechanism for the resource program portfolio?
 - (b) Through the development of a separate performance adder mechanism?
 - (c) In a qualitative manner through evaluation studies without providing either the potential for shareholder earnings or the risk of financial penalties based on performance?
 - (d) In another way?
8. Describe how your proposal meets the Commission's goals for energy efficiency as articulated in the Energy Efficiency Policy Manual adopted in D.05-04-051?

Note: The answers to #9 and #10 below will need to be based on the common data set and information on earnings rates/risk and reward profiles for supply-side procurement opportunities.

9. Describe how the target earnings level under your proposal compares with the earnings rates associated with utility supply-side procurement opportunities? "Target" earnings level refers to the earnings under your proposal at forecasted performance basis (based on the common data set). See Table 7 in D.94-10-059, for example. You may use the June 9 initial assessment presented by the utilities for this purpose, or modify/refine that assessment in your comments.
10. Describe how the level of earnings opportunity under your proposed incentive mechanism for energy efficiency is reasonable in the context of differences in the risk/reward profiles of utility resource choices? See the discussion of this type of comparison in D.94-10-059 (57 CPUC 2d, 1, pp. 51-58 (and also Attachment 2)). You may use the June 9 initial assessment presented by the utilities for this purpose, or modify/refine that assessment in your comments.

The following issues will also be addressed in Phase 1. The utilities are required to address them in their pre-workshop written comments. Interested parties are encouraged to (but not required) to also address them in their pre-workshop comments:

11. How should free rider (“net-to-gross”) adjustments be applied in calculating the costs and benefits of the risk/reward incentive mechanism performance basis? In particular, should the adjustment be applied to the “cost” side of the equation (be specific – which cost components if your answer is yes)? Why or why not? In presenting your answer, please discuss the Standard Practice Manual directions on net-to-gross adjustments, past practices and other considerations you believe are relevant to this issue.
12. Should shareholder incentive payments under the risk/reward mechanism adopted by the Commission be included (as a cost) in the energy efficiency tests of cost effectiveness? Why or why not?

(END OF ATTACHMENT 4)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling and Scoping Memo and Notice of Phase 1 Workshops on Risk/Return Incentive Mechanism on all parties of record in this proceeding or their attorneys of record.

Dated May 24, 2006, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.